

No. 16035 ✓

United States
Court of Appeals
for the Ninth Circuit

RALPH C. GRANQUIST, District Director of Internal Revenue for the District of Oregon,
Appellant,

vs.

MARGARET HACKLEMAN,
Appellee.

Transcript of Record

Appeal from the United States District Court for the District of Oregon

FILED

AUG - 4 1958



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

- CHARLES K. RICE,
Asst. U. S. Attny. General;
- LEE A. JACKSON,
Attorney, Dept. of Justice,
Washington 23, D. C.;
- C. E. LUCKEY,
United States Attorney;
- EDWARD J. GEORGEFF,
Assistant United States Attorney,
United States Courthouse,
Portland, Oregon,
For Appellant.
- ALVIN J. GRAY,
ROBERT F. FOLEY,
RICHARD H. M. HICKOK,
1044 Bond Street, Bend, Oregon,
For Appellee.



In the United States District Court
for the District of Oregon

Civil 8817

MARGARET HACKLEMAN,

Plaintiff,

vs.

RALPH C. GRANQUIST, District Director of In-
ternal Revenue for the District of Oregon,

Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action
alleges:

I.

That this Court has jurisdiction of this action
pursuant to Section 6213, Title 26, U.S.C.A.

II.

That the Plaintiff is the duly appointed, qualified
and acting Executrix of the Estate of Abe Hackle-
man, Deceased.

III.

That on or about June 6, 1956, the plaintiff filed
with the defendant income tax returns for herself
for the years 1953 and 1954 and for the Estate of
Abe Hackleman for the years 1953 and 1954, and
paid the taxes and interest due thereon.

IV.

That on or about the sixth day of June, 1956, the
defendant assessed an addition to the tax of ap-

proximately two thousand dollars under Section 6651, Title 26, U.S.C.A. and demanded payment thereof within ten days. Subsequent thereto the defendant filed a notice of levy with the Clerk of Crook County, Oregon, which said levy constitutes a lien against the real property of the Estate of Abe Hackleman located in Crook County, Oregon.

V.

That the defendant did not issue a notice of deficiency prior to the assessment of the additions to the tax as required under Sections 6212 and 6213, Title 26, U.S.C.A.

VI.

That unless restrained by this Court the defendant will cause a distraint warrant to be issued and served, thereby causing irreparable damage to the plaintiff and to the Estate of Abel Hackleman, deceased.

Wherefore the plaintiff prays for a temporary restraining order and an order of this Court enjoining the defendant or any of his agents or employees from issuing and serving a distraint warrant against the plaintiff or the Estate of Abe Hackleman, deceased, based upon the assessment of addition to the tax of the plaintiff and the Estate of Abe Hackleman, deceased, for the years 1953 and 1954, and declaring the defendant's assessment of additions to taxes and the lien created thereby null and void.

/s/ RICHARD H. M. HICKOK,
Attorney for Plaintiff.

State of Oregon,
County of Multnomah—ss.

I, Richard H. M. Hickok, being duly sworn, say that I am the attorney for the plaintiff herein and that the allegations contained in the foregoing complaint are true as I verily believe.

/s/ RICHARD H. M. HICKOK.

Subscribed and sworn to before me this 17th day of September, 1956.

[Seal] /s/ ALICE SIECKE,
Notary Public for Oregon.

My commission expires: March 17, 1958.

[Title of District Court and Cause.]

AFFIDAVIT

I, Richard H. M. Hickok, being first duly sworn, depose and say:

I.

That the plaintiff is engaged in the administration of the assets of the Estate of Abe Hackleman, which consists of a cattle and grain ranch in Crook County, Oregon. That she is currently in the process of harvesting ripe hay and rounding up cattle prior to the onset of severe weather and that any delay of such process will cause irreparable damage to the

crop and to the cattle. The continuation of this operation requires the use of funds in the bank and her presence. All of the funds and the assets of the plaintiff are currently being used in the operation of the ranch. The plaintiff has no other funds or assets available to her for the continued operation of the ranch.

II.

The action of the defendant will deprive the plaintiff of her rights to an administrative hearing **before the Tax Court** of the United States.

/s/ RICHARD H. M. HICKOK,
Attorney for Plaintiff.

Subscribed and sworn to before me this 17th day of September, 1956.

[Seal] /s/ ALICE SIECKE,
 Notary Public for Oregon.

My commission expires March 17, 1957.

[Endorsed]: Filed September 17, 1956.

[Title of District Court and Cause.]

ORDER

This matter came on ex parte on the 17th day of September, 1956, on the motion of the plaintiff for a temporary restraining order, the plaintiff appearing by Richard H. M. Hickok and the defendant

not appearing, and the Court having heard a statement by Counsel for the plaintiff,

Now, Therefore, based upon the verified complaint herein and the affidavit attached thereto, it is hereby

Ordered and Adjudged as follows:

1. The defendant herein and his agents or employees are hereby restrained from enforcing or executing the assessment of additions to the taxes of the plaintiff and the Estate of Abe Hackleman, deceased, issued on or about June 6, 1956, and covering the calendar years 1953 and 1954, and in particular from issuing or serving a distraint warrant based upon said additions to taxes.

2. The defendant is hereby ordered to appear in this Court at two o'clock p.m. on Monday, September 24, 1956, to show cause if any there be why this order should not be continued.

3. This Order shall not be effective until the plaintiff files with the Clerk of this Court a cost bond in the amount of One Hundred Dollars.

Dated this 17th day September, 1956.

/s/ WILLIAM G. EAST,
Judge.

[Endorsed]: Filed September 18, 1956.

[Title of District Court and Cause.]

AMENDED COMPLAINT

Comes now the plaintiff and for cause of action alleges:

I.

That this Court has jurisdiction of this action pursuant to Section 6213, Title 26, U.S.C.A., and Section 1346, Title 26, U.S.C.A.

II.

That the Plaintiff is the duly appointed, qualified and acting Executrix of the Estate of Abe Hackleman, Deceased.

III.

That on June 5, 1956, the plaintiff filed with the defendant income tax returns for herself for the years 1953 and 1954 and for the Estate of Abe Hackleman for the years 1953 and 1954, and paid the taxes and interest due thereon.

IV.

That on or about the 6th day of June, 1956, the defendant assessed against Abe and Margaret Hackleman for the year 1953 a deficiency in tax, due to a mathematical error, of \$180.34, together with interest in the amount of \$28.76, and an addition to the tax for late filing of a return as provided by Section 291, Title 26 U.S.C.A. (1939) in the amount of \$346.16.

V.

That on or about the sixth day of June, 1956, the defendant assessed against the Estate of Abe Hackleman for the year 1953 a deficiency in tax due to a mathematical error in the amount of \$120.35 together with interest in the amount of \$22.85, and an addition to the tax for late filing of a return as provided by Section 291, Title 26, U.S.C.A. (1939) in the amount of \$476.31.

VI.

That the said assessments for the year 1953 under Section 291, Title 26, U.S.C.A., were not jeopardy assessments and the defendant did not issue a notice of deficiency prior to the assessment of the addition to the tax as required under Section 272, Title 26, U.S.C.A. (1939).

VII.

That on or about the sixth day of June, 1956, the defendant assessed against Margaret Hackleman for the year 1954, an addition to the tax for the late filing of a return as provided by Section 6651, Title 26 U.S.C.A. (1954), in the amount of \$578.49.

VIII.

That on or about the sixth day of June, 1956, the defendant assessed against the Estate of Abe Hackleman for the year 1954, an addition to the tax for the late filing of a return as provided by Section 6651, Title 26, U.S.C.A. (1954), in the amount of \$663.90.

IX.

That the said assessments for the year 1954 under Section 6651, Title 26, U.S.C.A., were not jeopardy assessments and the defendant did not issue a notice of deficiency prior to the assessment of the addition to the tax as required under Section 6213, Title 26, U.S.C.A. (1954).

X.

That unless restrained by this Court the defendant will cause a distraint warrant to be issued and served, thereby causing irreparable damage to the plaintiff and to the Estate of Abe Hackleman, deceased.

Wherefore, the plaintiff prays for a temporary restraining order and an order of this Court enjoining the defendant or any of his agents or employees from issuing and serving a distraint warrant against the plaintiff or the Estate of Abe Hackleman, deceased, based upon the assessment of addition to the tax of the plaintiff and the Estate of Abe Hackleman, deceased, for the years 1953 and 1954, and declaring the defendant's assessment of additions to taxes and the lien created thereby null and void.

/s/ RICHARD H. M. HICKOK,
Attorney for Plaintiff.

Duly verified.

Service of copy acknowledged.

[Endorsed]: Filed October 15, 1956.

[Title of District Court and Cause.]

MOTION TO DISMISS

The District Director of Internal Revenue for the District of Oregon, by C. E. Luckey, United States Attorney for the District of Oregon, his attorney, moves to dismiss the action upon the grounds that this Court is without jurisdiction thereof because this action is one to enjoin the collection of Internal Revenue taxes, the maintenance of which is expressly prohibited by Section 7421(a) of the Internal Revenue Code of 1954.

/s/ C. E. LUCKEY,
United States Attorney.

Portland, Oregon, 10th day of December, 1956.

/s/ C. E. LUCKEY,
United States Attorney.

Affidavit of service by mail attached.

[Endorsed]: Filed December 17, 1956.

[Title of District Court and Cause.]

OPINION

East, Judge.

This matter is before the Court upon, first, an order herein requiring the Defendant to show cause, if any there be, why the temporary restraining order heretofore entered herein, pendente lite, en-

joining Defendant, as Director, from issuing and serving a distraint warrant against the Plaintiff or the Estate of one Abe Hackleman should not be continued, and, second, the Defendant's Motion to dismiss the above-entitled cause.

Plaintiff is the Executrix of the Estate of Abe Hackleman, deceased, and appears herein for herself and as such Executrix, and seeks a declaration that the hereinafter referred to assessment of addition to tax by the Defendant and the lien created thereby null and void.

It appears from the records and files herein, assumed for the purposes of the above matters to be true, that on June 5, 1956, the Plaintiff filed income tax returns for herself and the Estate of Abe Hackleman for the years 1953 and 1954.

On June 6, 1956, Defendant assessed an addition to the tax (approximately \$2,000.00) by virtue of Section 291 of the Internal Revenue Code of 1939,¹ and Section 6651 of the Internal Revenue Code of

¹ Sec. 291. Internal Revenue Code of 1939. "(a) In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there should be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax

1954.² Defendant demanded payment thereof within ten days. Defendant subsequently filed a notice of levy with the Clerk of Crook County, Oregon, constituting a lien against the real property of the Estate of Abe Hackleman.

The question is whether a delinquency penalty is a "deficiency" within the meaning of Section 272 (a) (1) of the Internal Revenue Code of 1939,³

shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612(d) (1)."

² Sec. 6651 Internal Revenue Code of 1954. "(a) Addition to the tax. In case of failure to file any return required under authority of subchapter A of Chapter 61 * * * unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on such return 5 per cent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 per cent for each additional month or fraction thereof during which such failure continues, not exceeding 25 per cent in the aggregate."

³ Sec. 272(a) (1) Internal Revenue Code of 1939. "If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed * * * the taxpayer may file a petition with the Board of Tax Appeals for

tained therein that the "amount so added shall be collected in the same manner as the tax." The Court said, in determining the legislative intent:

"It is inconceivable to us that Congress could have intended the section to expressly provide one method of collection for these penalties and then to stultify itself by describing them in such terms as to require reference to another section for a different method of collection."

While the language used in the 1939 code would strongly indicate that a penalty under section 291 would not be a "deficiency," when read in connection with the 1954 code, a doubt clearly arises as to the legislative intent. As pointed out in *Davis vs. Dudley*, 124 F. Supp. 426, (while holding a penalty under section 294(d) of the 1939 code to be a deficiency):

"Hence, in the absence of unequivocal language to the contrary, such as is contained in Section 291, we think this type of penalty should be construed as a deficiency in order that the judgment of the Commissioner may be tested by the Tax Court as a safeguard against erroneous assessments and compulsory payment pending final decision."

At this point the Court directs attention to its footnote number 5, which reads as follows:

"In this connection it is interesting to note that in the Internal Revenue Code of 1954, in two sections (6651 and 6653) where the imposi-

tion of penalties likewise depends upon the exercise of judgment, collection thereof is by way of deficiency procedure and not in the manner of collecting taxes; see 6659.” (See footnote 4)

Section 6651 of the 1954 Code, as pointed out earlier, is the counterpart of Section 291 of the 1939 Code. While it is thus clear that under the 1954 Code the penalties assessed under Section 6651 for additions to taxes are “deficiencies” there remains the question of whether there was a change in the law by virtue of the 1954 Code.

Plaintiff contends that the conflict in decisions was due to the “vague language” of the 1939 Code and hence the new wording in Section 6659 of the 1954 Code to clarify the legislative intent. Plaintiff contends there was no change in the law.

At page 4568, 1954 U. S. Code and Cong. and Adm. News, the following appears regarding Section 6659:

“This section provides that the addition to the tax, additional amounts, and penalties provided by chapter 68 shall be assessed; collected, and paid in the same manner as taxes, except where otherwise specifically provided in another section of this title. This conforms to the rules under existing law. (Emphasis ours) By virtue of this section, it is unnecessary in other parts of the title to specifically refer to these additions to the tax when providing rules as to collection, assessment, etc., of taxes. This sec-

tion also makes clear that the procedures for the assessment of deficiencies in income, estate and gift taxes (including 90-day letters and appeal to the Tax Court) also apply to additions to those taxes.”

It is defendant’s contention that the Erie Forge decision was part of existing law and that if the 1954 Code did not change existing law, then the rule of the Erie Forge case must also apply to the 1954 Code.

It would appear that the language in Section 6659 of the 1954 Code, in effect, construes and clarifies the language used in Section 291 of the 1939 Code and therefore should be accepted as a declaration by Congress of the spirit and meaning of the 1939 Code as well as the 1954 Code.

While not specifically binding upon the Defendant, it appears that in the following cases the propriety of penalties similar to the instant case was presented to the Tax Court by the issuance of a notice of deficiency as is requested by the taxpayer in this case:

Fides v. Collector of Internal Revenue, 1942,
47 B.T.A. No. 280, affirmed 137 Fed. 2d, 731

Ross v. Collector of Internal Revenue, 1941
case, 44 B.T.A. 1

Taylor Securities, Inc. v. Collector of Internal Revenue, 1939 case, 40 B.T.A. 695

Groves v. Collector of Internal Revenue, 1938
38 B.T.A. 727

Fidelity Bankers Trust Company v. Collector of Internal Revenue, 1928, 37 B.T.A. 142

Pioneer Automobile Service Company v. Collector of Internal Revenue, 1937, 36 B.T.A. 213

Blenheim Company, Liquidated, v. Collector of Internal Revenue, 1940, 42 B.T.A. 1248 (affirmed 125 Fed. 2d, 906).

thereby indicating an acknowledged distinction between the factual situation of like cases with the instant case, and the peculiar factual situation of **Erie Forge Company**.

Furthermore, this Court feels that the plaintiffs are entitled to an administrative determination as to whether or not their failure to file a timely tax return was "due to reasonable cause and not due to wilful neglect."

Therefore, the Court concludes that the temporary restraining order, *pendente lite*, aforesaid, should be continued and that the motion of the defendant to dismiss the above-entitled cause should be denied. The defendant is allowed thirty days within which to answer plaintiff's complaint on its merits or submit the cause on plaintiff's prayer for permanent relief as prayed for upon the record.

Counsel for plaintiff is requested to submit appropriate order in conformity with the foregoing.

Dated, January 7, 1957.

[Endorsed]: Filed January 7, 1957.

[Title of District Court and Cause.]

RESTRAINING ORDER

This matter having been heard upon motion of the plaintiff for a restraining order, the plaintiff appearing by Richard H. M. Hickok, and the defendant appearing by Edward J. Georgeff, Assistant United States Attorney, and the Court having heard statements by counsels for the plaintiff and defendant, and memoranda of law having been filed herein,

Now, Therefore, Based upon verified complaint herein and the affidavit attached thereto, the memoranda of law and arguments by counsels, it is hereby Ordered and Adjudged as follows:

1. The motion of the defendant to dismiss the complaint of the plaintiff is denied.

2. The defendant herein, his agents or employees, are hereby restrained from enforcing or executing the assessment of additions to the taxes of the plaintiff and the estate of Abe Hackleman, deceased, issued on or about June 6, 1956, and covering the calendar years 1953 and 1954, and particularly from issuing or serving a distraint warrant based upon said addition to said taxes, until further order herein.

3. The defendant is allowed thirty days within which to answer plaintiff's complaint on its merits or to submit the cause of plaintiff's prayer for permanent relief as prayed for upon the record.

Dated this 14th day of January, 1957.

/s/ WILLIAM G. EAST,
Judge.

[Endorsed]: Filed January 14, 1957.

[Title of District Court and Cause.]

ANSWER

Comes now Ralph C. Granquist, District Director of Internal Revenue for the District of Oregon, the defendant above named, by C. E. Luckey, United States Attorney for the District of Oregon, his attorney, and for his answer to the complaint herein, alleges as follows:

I.

Denies each and every allegation contained in paragraph I of the complaint.

II.

Admits each and every allegation contained in paragraph II of the complaint.

III.

Admits each and every allegation contained in paragraph III of the complaint.

IV.

Denies each and every allegation contained in paragraph IV of the complaint, except he admits that on or about the 6th day of June, 1956, there

was assessed against Abe and Margaret Hackleman additional income taxes for the year 1953 because of a mathematical error in their return for that year, in the sum of \$180.34, together with interest in the sum of \$28.76, and penalty for late filing of the return for that year in the sum of \$346.16.

V.

Denies each and every allegation contained in paragraph V of the complaint, except he admits that on or about the 6th day of June, 1956, there was assessed against the Estate of Abe Hackleman additional income taxes for the year 1953 because of a mathematical error in his return for that year, in the sum of \$120.35, together with interest in the sum of \$22.85, and penalty for late filing of the return in the sum of \$476.31.

VI.

Admits each and every allegation contained in paragraph VI of the complaint.

VII.

Admits each and every allegation contained in paragraph VII of the complaint.

VIII.

Admits each and every allegation contained in paragraph VIII of the complaint.

IX.

Admits each and every allegation contained in paragraph IX of the complaint.

X.

Denies each and every allegation contained in paragraph X of the complaint.

For a Complete Defense to the Cause of Action Alleged In the Complaint:

XI.

That this Court is without jurisdiction of the subject matter of this suit because it is a suit to enjoin the collection of internal revenue taxes, the maintenance of which is expressly prohibited by Section 6421(a), Internal Revenue Code of 1954.

For a Further Complete Defense to the Cause of Action Alleged In the Complaint:

XII.

That the complaint fails to state a claim against the defendant upon which relief can be granted.

Wherefore, defendant demands judgment dismissing the complaint.

/s/ C. E. LUCKEY,
United States Attorney;

/s/ EDWARD J. GEORGEFF,
Assistant United States
Attorney.

Affidavit of service by mail attached.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Upon the verified complaint herein and upon the verified answer herein, the Plaintiff moves the Court as follows:

1. That judgment issue from this Court decreeing that the defendant's assessment against Margaret Hackleman and Abe Hackleman for the year 1953 of a deficiency in tax due to an addition to the tax for the late filing of a return under Sec. 291, Title 26, U.S.C.A. (1939) in the amount of \$346.16, and the defendant's assessment against the estate of Abe Hackleman for the year 1953 of a deficiency in tax due to an addition to the tax for the late filing of a return under Sec. 291, Title 26, U.S.C.A. (1939) in the amount of \$476.11, and the defendant's assessment against Margaret Hackleman for the year 1954 of a deficiency in tax due to an addition to the tax for the late filing of a return under Section 6651, Title 26, U.S.C.A. (1954) in the amount of \$578.41, and the defendant's assessment of a deficiency in tax against the Estate of Abe Hackleman for the year 1954 due to an addition to the tax for the late filing of a return under Section 6651, Title 26, U.S.C.A. (1954) in the amount of \$663.90, be declared void and without legal effect.

2. That a judgment issue from this Court, enjoining the defendant from assessing said additions to the tax without complying with the deficiency procedure provided for in Section 6213, Title 26, U.S.C.A. (1954).

As grounds for this Motion, the plaintiff will rely upon Rule 56, Federal Rules of Civil Procedure, applicable to motions for summary judgment where there remain no issues of fact.

/s/ RICHARD H. M. HICKOK,
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed October 18, 1957.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

Comes now the defendant by his attorney, C. E. Luckey, United States Attorney for the District of Oregon, and Edward J. Georgeff, Assistant United States Attorney, and moves the Court to grant defendant's motion for summary judgment and deny plaintiff's motion for summary judgment for the following reasons:

(1) That the additions to taxes imposed under Section 291 of the Internal Revenue Code of 1939 and Section 6651 of the Internal Revenue Code of 1954, (failure to file timely federal income tax returns) against Abe and Margaret Hackleman, Estate of Abe Hackleman and Margaret Hackleman, where applicable, were properly assessed and did not require the sending of a notice of proposed deficiency (90-Day letter) preliminary to assessment.

provided for in Sec. 6213, Title 26, U.S.C.A., (1954).

Dated this 13th day of January, 1958.

/s/ WILLIAM G. EAST,
District Judge.

[Endorsed]: Filed January 13, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Margaret Hackleman, plaintiff, and Richard H.
M. Hickok, attorney for plaintiff:

Notice is hereby given that Ralph C. Granquist, District Director of Internal Revenue for the District of Oregon, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered in this action on the 13th day of January, 1958, in favor of plaintiff and against defendant.

Dated this 27th day of February, 1958, at Portland, Oregon.

C. E. LUCKEY,
United States Attorney
for the District of Oregon.

/s/ EDWARD J. GEORGEFF,
Assistant United States
Attorney.

[Endorsed]: Filed February 27, 1958.

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard *ex parte* upon motion of defendant for an order extending time for the filing of the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit to enable The Solicitor General to have additional time to consider said appeal, and the Court being fully advised in the premises.

It Is Ordered that the time for filing the record on appeal and docketing the within action be and it is hereby extended to ninety days from February 27, 1958, the date of filing of the Notice of Appeal.

Dated at Portland, Oregon this 7th day of April, 1958.

/s/ WILLIAM G. EAST,
Judge.

[Endorsed]: Filed April 7, 1958.

[Title of District Court and Cause.]

DOCKET ENTRIES

1956

Sept.17—Filed complaint

Sept.17—Issued summons — to marshal

Sept.17—Entered order specially admitting Richard
H. M. Hickok for this case

Sept.17—Entered order granting temporary re-
straining order & preliminary injunction

1956

& setting hearing on order to show cause why same should not be continued to Sept. 24, 1956 at 2 p.m.

Sept. 17—Entered order for bond of \$100

Sept. 18—Filed motion for temporary restraining order & preliminary injunction

Sept. 18—Filed undertaking on injunction

Sept. 18—Filed order for temporary restraining order & preliminary injunction & order to show cause

Sept. 21—Entered order setting order to show cause to Oct. 1, 1956 at 2 p.m.

Sept. 19—Filed summons with marshal's return

Oct. 1—Entered order specially admitting Mr. John J. Sexton for purposes of this case

Oct. 1—Entered order allowing 15 days within which to file amended complaint

Oct. 1—Record of hearing on order to show cause & under advisement

Oct. 15—Filed amended complaint

Oct. 15—Filed praecipe for summons

Oct. 16—Issued summons on amended complaint-to marshal

Oct. 23—Filed summons with marshal's return

Nov. 23—Filed & entered order granting deft. until & including Dec. 17, 1956, to answer or appear

Dec. 17—Filed motion of defendant to dismiss

Dec. 27—Filed plaintiff's memo in deft's motion to dismiss

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- Dec. 31—Record of hearing on deft. motion to dismiss and under advisement on record
- Jan. 7—Filed opinion
- Jan. 14—Filed & entered restraining order
- Feb. 6—Filed stipulation for order extending time to March 6, 1957
- Feb. 6—Filed & entered order extending time to March 6, 1957
- Mar. 4—Filed notice of appeal by defendant
- Mar. 6—Filed & entered order suspending proceedings as to def. until further order of ct.
- Apr. 12—Filed stipulation
- Apr. 12—Filed & entered order dismissing appeal
- Apr. 12—Filed answer
- Oct. 18—Filed motion of plaintiff for summary judgment
- Oct. 25—Filed motion of deft. for summary judgment, etc.
- Dec. 12—Filed stipulation re submission to court for decision without further argument, etc.

1958

- Jan. 13—Filed & entered judgment
- Feb. 28—Filed notice of appeal by defendant
- Apr. 7—Filed motion for extension of time to docket appeal
- Apr. 7—Filed & entered order extending time 90 days after Feb. 27, 1958, to docket appeal
- May 26—Filed designation of contents of record on appeal

In the United States District Court for the
District of Oregon

CERTIFICATE OF CLERK

United States of America
District of Oregon—ss:

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Restraining order; Amended complaint; Defendant's motion to dismiss action; Opinion of Judge William G. East; Restraining order; Answer; Plaintiff's motion for summary judgment; Defendant's motion for summary judgment and opposition to plaintiff's motion for summary judgment; Judgment; Notice of appeal by defendant; Order extending time to docket appeal; Designation of contents of record on appeal and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8817, in which Ralph C. Granquist, District Director of Internal Revenue for the District of Oregon is the defendant and appellant and Margaret Hackleman is the plaintiff and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 27th day of May, 1958.

R. DEMOTT,
Clerk;

By /s/ THORA LUND,
Deputy.

[Endorsed]: No. 16035. United States Court of Appeals for the Ninth Circuit. Ralph C. Granquist, District Director of Internal Revenue for the District of Oregon, Appellant, vs. Margaret Hackleman, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: May 29, 1958.

Docketed: May 29, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16035

RALPH C. GRANQUIST, District Director of In-
ternal Revenue for the District of Oregon,
Appellant,

vs.

MARGARET HACKLEMAN,
Appellee,

STATEMENT OF POINTS UPON WHICH
THE APPELLANT WILL RELY

The District Court erred in concluding that the assessment of delinquency penalties under Section 291(a), Internal Revenue Code of 1939 and under Section 6651(a), Internal Revenue Code of 1954, is subject to the restrictions upon assessment provided by Section 272(a), Internal Revenue Code of 1939 and by Section 6313(a), Internal Revenue Code of 1954.

/s/ C. E. LUCKEY,

United States Attorney for
the District of Oregon.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 25, 1958.